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In the Supreme Court of the United States

OCTOBER TERM, 1939

In re DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, PETITIONERS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO AND MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF RECORD.

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Joseph Rubinstein and Charles Rubinstein, the above named petitioners, each in his own behalf, pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio entered February 13, 1940, disbarring them from the practice of law.

OPINIONS BELOW

The Supreme Court of the State of Ohio rendered no opinion. The Ohio Court of Appeals for Cuyahoga County likewise rendered no opinion. The opinion of the Court of Common Pleas of the County of Cuyahoga has not been reported but is printed as Appendix A, *infra* pp. 16 *et seq.*

JURISDICTION

The judgment of the Supreme Court of the State of Ohio was entered February 13, 1940 (R.). The petitioners' motions for rehearing were denied on February 28, 1940. The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925, and under Section 8 of the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the proceedings whereby each petitioner was required to give testimony against himself in a star chamber session without the assistance of counsel during which examination he was subjected to prolonged questioning over his protests and objections and whether the use of such testimony against him in the subsequent disbarment proceeding constituted a denial of due process of law in violation of the Constitution of the United States.

2. Whether each petitioner has been deprived of his office as an attorney and counsellor at law and of his right and privilege to serve as an attorney in the courts of the State of Ohio and has been subjected to a forfeiture, all without due process of law and in denial of equal protection of the law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

3. Whether the judgment below erroneously enforced a law in a manner abridging the privileges and immunities of the petitioners in violation of the Fourteenth Amendment of the Constitution of the United States.

4. Whether the judgment below unlawfully constitutes an impairment of the obligation of a contract between each petitioner and the State of Ohio in violation of Article 1, Section 10, of the Constitution of the United States.

STATUTES AND RULES OF COURT INVOLVED

Ohio General Code, Section 1707, provides as follows:

> Suspension or removal of an attorney; when. The Supreme court, court of appeals or court of common pleas may suspend or remove an attorney at law (from office) or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state of Ohio. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney at law, when it comes to the knowledge of any judge or when brought to his knowledge by the bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal or reprimand.

The Rules of Practice in the Supreme Court of Ohio (Ohio State Reports) applicable to this case are as follows:

RULE XXVIII

Rules of Professional Conduct

Section 1. These rules of professional conduct shall be binding upon all members admitted to practice law in the state of Ohio, and the wilful breach thereof shall be punished by reprimand, by suspension or by disbarment, as may be determined by any court of competent jurisdiction.

The Canons of Ethics of the American Bar Association are commended; and nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof.

Section 2. An attorney-at-law shall not advertise or otherwise solicit professional employment. This rule shall not apply to the publication or use of ordinary professional cards or conventional listings in legal directories and newspapers.

Section 3. An attorney-at-law shall not employ another to solicit or to obtain or remunerate another for soliciting or obtaining professional employment for him.

STATEMENT

On the day of 1938, in the Court of Common Pleas of Cuyahoga County, Ohio, the Honorable Fred H. Wolf, Judge of the said court, appointed Charles Auerbach, James Dolphin, and George Bryan, attorneys practicing at the bar of that court, as a committee directed to prepare and file written charges setting forth specifications and grounds of complaint against the petitioners in the

performance of their professional duties as attorneys at law. The order recited (R.):

> "Upon oral motion and upon information, it appearing that Joseph Rubinstein, Charles Rubinstein, and Seymour A. Tarnoff, attorneys at law practicing in this court and officers hereof, are probably guilty of misconduct in their profession and office involving moral turpitude."

Prior to the institution of these proceedings an investigation touching alleged unethical practices was conducted in Cleveland by a Committee headed by a Common Pleas Judge, who was designated to conduct such investigation by order of the Court of Common Pleas of Cuyahoga County, Ohio. In the course of this investigation petitioners were subpoenaed to appear before Judge Fred H. Wolff, who was in charge of the investigation as aforesaid, examined touching a large number of cases handled by them covering a period of eight or nine years; files and office correspondence were examined and they were subjected personally to cross-examination for hours at a time behind closed doors and without having an attorney present. The testimony so elicited was transcribed and afterwards was introduced in evidence as an exhibit over petitioners' objections, to support the charges of unprofessional conduct. A Petition in Disbarment, based upon the investigation, was filed in the Common Pleas Court of Cuyahoga County against petitioners, and a trial had. The trial court found petitioners guilty of soliciting employment and of giving false testimony before Judge Wolf. The other charge was dismissed. The court

then rendered a decision disbarring petitioners from the practice of law, in all the courts of the State of Ohio.

Thereafter an appeal was prosecuted to the Court of Appeals of Cuyahoga County. This court affirmed the decision of the lower court, without opinion. In due time an appeal was prosecuted to the Supreme Court of the State of Ohio, based on questions arising under the Constitution of the United States, under authority of Section 12223-29 of the General Code of the State of Ohio, which provides, among other things, that no appeal shall be filed in the Supreme Court without its leave, or a judge thereof, except in cases involving questions arising under the Constitution of the United States. A motion for leave to appeal and to certify the record was filed at the same time.

The appeal filed as of right in the Supreme Court was based on the following assignments of error, which constitute Assignments Nos. 8, 9 and 12 filed in the Supreme Court of Ohio in behalf of each petitioner:

Assignment No. 8.

> The respondent has been deprived of his office, property and privileges and subjected to a forfeiture without due process of law and in denial of the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Assignment No. 9.

> The court in its sentence of disbarment enforced a law abridging the privileges of respondent, a United States citizen, in violation

of the Fourteenth Amendment to the Constitution of the United States.

Assignment No. 12.

Predicating a disbarment on violation of Rule 28 of the Supreme Court of Ohio constitutes an impairment of a contractual obligation existing between respondent and the State of Ohio, in violation of Article 1, Section 10 of the Constitution of the United States of America.

These questions were raised specifically for the first time in the Supreme Court of Ohio by way of assignments of error.

The appeal was perfected in due time. Thereafter a motion was filed by the Trial Committee to dismiss the appeal on the ground that no constitutional question was involved. At the hearing on this motion all the constitutional questions raised in said three assignments of error were briefed, argued and considered in the Supreme Court. Thereafter the court rendered a decision to the effect that no debatable constitutional question was involved, and dismissed petitioners' appeal. No opinion was rendered by the Supreme Court. The motion to certify the record also filed at the same time was overruled. Thereafter a motion for a rehearing was filed in the Supreme Court of Ohio and was overruled on the 28th day of February, 1940. Thereupon the decree of disbarment became final.

SPECIFICATIONS OF ERRORS TO BE URGED

1. The court below erred in dismissing the petitioners' appeals as involving no substantial Federal question.

2. The judgments of the court below dismissing the appeal of the petitioners deprived each petitioner of his office, property and privileges and subjected him to the forfeiture of the same without due process of law and in denial of the equal protection of the law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

3. The judgment of the Court of Appeals of the County of Cuyahoga, Ohio, affirming the judgment of the Court of Common Pleas for the said County of Cuyahoga disbarring the petitioners and said judgment of disbarment deprived each petitioner of his office, property and privileges and subjected him to the forfeiture of the same without due process of law and in denial of the equal protection of the law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

4. The judgment of disbarment which became final by the judgment of the court below enforced a law of the State of Ohio abridging the privileges of each petitioner, a citizen of the United States, in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The judgment of disbarment which became final by the judgment of the court below unlawfully impaired the contractual obligation existing between the petitioners and the State of Ohio, in violation of Article I, Section 10, of the Constitution of the United States of America.

REASONS FOR GRANTING THE WRIT

The petitioners contend that their disbarment without proof of misconduct involving moral turpi-

tude is an arbitrary unreasonable act of oppression which deprives them of rights, privileges, immunities, liberties, offices and property without due process of law and contravenes the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and impairs the obligation of contract in violation of Article 1, Section 10 of the Constitution of the United States.

The petitioner Joseph Rubinstein was admitted to the Ohio Bar in 1926. Charles Rubinstein was admitted in 1933. Their certificates of admission issued to them pursuant to the constitution and laws of the State of Ohio constituted contracts at least as solemn and significant as the Charter of Dartmouth College and as much entitled to protection against arbitrary forfeiture as the franchise of a railroad company or a telephone company.[1] Under Ohio General Code, Sections 1698, 1700, 1707, the petitioner could only be disbarred "for misconduct or unprofessional conduct in office involving moral turpitude".

The disbarment of the petitioners, therefore, is obviously predicated upon the finding of the Court of Common Pleas of Cuyahoga County that each petitioner testified falsely that he did not solicit clients. In other words, it clearly appears that both the Committee and the court below were convinced that the petitioners could not be disbarred merely upon proof that they accepted clients procured by solicitation of third persons. Such conduct does not involve moral turpitude; whereas

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[1] *Dartmouth College* v. *Woodward*, 4 Wheat 518; *Louisville* v. *Cumberland Tel.*, 224 U.S. 649.

perjury or false testimony in a judicial proceeding would clearly involve moral turpitude and justify disbarment.

The petitioners were accused of soliciting clients and maintaining an organization for the solicitation of business for the firm Rubinstein & Rubinstein. The Committee summoned them to testify before Judge Wolf, where they were examined without benefit of counsel, without being informed of their right to counsel, and without being given an opportunity to have counsel present. The attorneys for the Committee cross-examined each petitioner vigorously and fully and each petitioner denied that he solicited business or maintained an organization for the solicitation of business. At the trial below each petitioner testified substantially as he did at the preliminary investigation and denied that he solicited business or maintained an organization for the solicitation of business. The court found as a matter of fact that the defendants were guilty of solicitation and maintaining an organization for the solicitation of professional business, thus resolving that issue against the petitioners. There is evidence in the record from which the court might conclude that a brother of the petitioners and certain clients of petitioners did solicit other clients to retain the petitioners. It must be emphasized, however, that that evidence completely absolves the petitioners of any wrongdoing or moral turpitude.

Moral turpitude has a well understood meaning. For an act to involve moral turpitude it must be not only *malum prohibitum* but *malum in se*. It must be inherently immoral. *Dail* v. *Halter*, 6

Ohio State 228; *State Board of Medical Examiners* v. *Friedman*, 150 Tenn. 152; *Bouvier's Law Dictionary; Words and Phrases.*

Obviously Rule 28 of the Rules of Practice of the Supreme Court of Ohio, ante p. 4, does not undertake to make solicitation an act involving moral turpitude. "It is impossible to conceive that the Supreme Court of Ohio intended by Rule 28 to lay down an arbitrary rule against solicitation when the act is neither unlawful nor unethical in fact".[2] Advertising, soliciting, and fee splitting are unethical rather because it did not become a gentleman of the Temple to do these things than because these acts are inherently wrong.[3]

In determining whether due process has been denied this Court is governed by the substance of things and not by mere form.[4] When the Supreme Court of a state decides a case in such a way that a party has not had a proper opportunity to present his evidence, he has been denied due process.[5] The Federal courts will not recognize as valid an order of suspension or disbarment where the procedure in the state court was wanting in due process.[6]

Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right

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[2] Levine, J., dissenting, In re Petition of the Committee on Rule 28 of the Cleveland Bar Association, 15 O.L.A. 106.

[3] Prof. Radin, Cornell Law Quarterly, April 1939, p. 463.

[4] *Simon* v. *Craft*, 182 U.S. 436.

[5] *Sanders* v. *Shaw*, 244 U.S. 317.

[6] *In re Noell*, 93 F. (2d) 5, C.C.A. 8; See also *Selling* v. *Radford*, 243 U.S. 46; *Windsor* v. *McVeigh*, 93 U.S. 274, 277, 278; *Hovey* v. *Elliott*, 167 U.S. 409.

to use his powers of mind and body in any lawful cause.[7] Arbitrary tests by which competent persons are excluded from lawful employment cannot be imposed by state regulations even where such employment affects the public health and safety.[8]

This Court has said that the privilege of practicing law before the courts of a state is not a privilege which arises by virtue of national citizenship.[9] It may be that this view is no longer sound in the light of the later decision of this Court in *Johnston* v. *Zerbst*, 304 U. S. 458. If an attorney may be deprived of his license by the arbitrary action of a state court without any semblance of due process, members of the bar may well decline to represent clients in unpopular causes and in cases in which the judge has a fixed bias against the defendant.

It is idle to argue that the rights and privileges of an attorney at law are not rights and do not constitute property but are subject to forfeiture at the whim or caprice of any court or judge. Attorneys owe a duty to defend and protect the rights of their clients faithfully and fearlessly. This duty they cannot undertake if the penalty therefor may be deprivation of their licenses to practice upon the whim or caprice of a judge.

Whether the right of an attorney to membership in the Bar and to practice before the courts

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[7] *Smith* v. *Texas*, 233 U.S. 630.

[8] *Smith* v. *Texas*, 233 U.S. 630; *Smith* v. *Alabama*, 124 U.S. 465; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *Prudential Ins. Co.* v. *Cheek*, 259 U.S. 530.

[9] *Bradwell* v. *State*, 16 Wallace 130; *In re Lockwood*, 154 U.S. 116.

be regarded as a property right or merely a liberty or privilege, he cannot, we submit, be deprived of that right, liberty, or privilege without due process of law. Obviously his honor, standing, and reputation at the Bar are as much the subjects of constitutional protection as the property and charter of a corporation.

When the petitioners were charged with soliciting business and maintaining an organization for the solicitation of business, by all the canons of due process they were entitled to a fair trial of that issue. The burden was on the Committee to establish the charge by clear and convincing testimony.[10] Whether the methods of the petitioners were in full compliance with the applicable canons of ethics was in sharp dispute. The petitioners contended and believed that their practices were not in violation of the canons or rules. They testified both at the preliminary investigation and in the disbarment proceedings fully and frankly in the utmost detail as to their methods of conducting their offices.

They denied personal solicitation. They denied maintaining an organization for purposes of solicitation. Upon the facts adduced at the preliminary hearing the Committee charged them with soliciting and maintaining an organization to solicit. This obviously was the only charge which could properly be preferred. The addition of the charge of false swearing was a gratuitous, vindictive and atrocious species of oppression.

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[10] *In re Morehouse*, 8 N.P. (N.S.) 179, 19 O.D. 428; *In re Sparks*, 6 O.L.R. 575.

In effect the Committee said to each petitioner: "We think you have been guilty of soliciting. We cannot prove personal solicitation without your self-incriminating testimony. We cannot find any moral turpitude in your professional conduct. We therefore shall charge you with false swearing unless you confess. We will not specify any particulars. Our charge of false swearing will be so general that it will be impossible for you to defend. However honest may be your belief in the truth of your testimony, in the fact that you did not solicit in violation of the rules, we shall convict you of false swearing if the court finds evidence of soliciting in any cases that came to your office."

The disbarment of the petitioners for false swearing without any proof of false swearing is therefore we submit an arbitrary denial of due process and equal protection of the law and constitutes an impairment of the obligation of contract.

If the judgment below is permitted to stand, a novel and dangerous device has been perfected for the ruin and degradation of members of the Bar. Under the decision in the case at bar a lawyer handling personal injury cases and charged with solicitation will not dare to deny the charge, however innocent he may be. If he denies the charge, as did the petitioners, and testifies that he does not solicit and does not maintain an organization for soliciting and the court subsequently finds that fact against him, he is automatically convicted of false swearing and subjected to disbarment.

The record discloses that the petitioner Joseph Rubinstein, following his reprimand in 1931, scrupulously endeavored in all possible respects to

avoid even the semblance of solicitation. Neither he nor his brother Charles Rubinstein personally solicited any cases. Therefore, we submit that there is no scintilla of evidence in the record that justifies a finding that either petitioner swore falsely that he did not solicit business. Likewise there is no evidence in the record that either petitioner paid anything of value either to Milton Rubinstein who solicited many cases or to any other person for bringing cases to the firm.

As the Supreme Court of Ohio itself said in *In Re Hawke*, 107 O. S. 341, 349, "We do not understand that when the Legislature confers a right upon a citizen of Ohio, any court has an inherent right to arbitrarily, or for any cause other than that enumerated in a statute, deprive such person of such right even though he be an attorney at law who is a quasi member of the court * * *. Attorneys at law are and should be governed by the same constitutional provisions touching the jurisdiction of courts as are other persons and professions."

CONCLUSION

The decision in the court below should not be permitted to stand without review by this Court. It erroneously determines an important question of Federal law which has not been but should be settled by this Court. It is respectfully submitted that the petition for a writ of certiorari should be granted.

BRIEN MCMAHON,
MARTIN J. MONAHEN,
Attorneys for Petitioners.

APPENDIX A.

FINDING OF FACTS AND OPINION OF TRIAL JUDGES.[11]

Joseph Rubinstein is charged with unprofessional conduct involving moral turpitude, and with misconduct in office involving moral turpitude.

In Specification No. 1, the Committee charges that for a long period of time he maintained an organization that engaged in soliciting professional employment in violation of Rule 28 of the Supreme Court. That he had associated with him one Milton Rubinstein and that he maintained an office and telephone connection at 5525 Woodland Avenue, Cleveland, Ohio, where contacts were made for the purpose of soliciting professional employment for Joseph Rubinstein; that he employed solicitors and informers, whose duty it was to report accidents. That the solicitors promised to pay living expenses, doctor bills and other expenses and advance money to prospective clients solicited, where the same was needed; that solicitors represented to prospective clients that they had the names and addresses of witnesses to the accidents or that some friend of the party involved in the accident, or friend of the family had sent them to make the solicitation. Further charges that he employed one Dr. Paul R. Siegel to examine and

[11] The first portion of this opinion deals solely with Seymour A. Terrell and therefore is omitted from this Appendix.

treat clients involved in accident cases and that he was unknown to the patient prior to the time of the accident.

A Bill of Particulars was filed naming as runners and touters, Milton Rubinstein, Charles Astikian, Jack Gibbons, alias Jack Barrett; "Sandy," last name unknown; "Rice" first name unknown; and other persons unknown to the Committee. In item four of the Bill of Particulars the Committee has charged that the respondent did on or about the time mentioned solicit professional employment from persons set forth in the Specifications attached, marked Exhibit "A" and made a part of the Specification 1. This Exhibit names fifty-six persons solicited together with the approximate date of solicitation.

In specification No. 2 it is charged that he misappropriated money in the Steve Martin matter.

Specification No. 3 charges that Joseph Rubinstein testified falsely before Judge Fred H. Wolf that he did not solicit professional employment and did not maintain an organization for that purpose.

Joseph Rubinstein graduated from a night law school and was admitted to the Bar in 1926 since which time he has been engaged in the practice of law at Cleveland, maintaining an office in the Public Square Building and an office in connection with a hardware store operated by his brother Milton, at 5525 Woodland Avenue, Cleveland, Ohio. He is unmarried, resides with his father and mother, his brother Milton and one or two unmarried sisters. He is the sole support of the family, excepting a small amount of income occasionally earned

by the father and it is significant that he testified that Milton does not contribute to the family's support.

Prior to engaging in the practice of law, he, in connection with his brother Milton and other members of the family, were engaged in the hardware business; at one time operating three stores. Two of the stores were disposed of and later a corporation organized under the name of "Milton Hardware Company" in which Joseph Rubinstein had stock, but Milton has succeeded to Joseph's interest in the hardware store, in which he claims to have no interest at the present time.

He was reprimanded in December 1930 for ambulance chasing.

Evidence was offered in support of the charges and specifications covering some thirty separate cases since February 3, 1934, in which either the party injured or some member of the family or the parent, where the injured party was a child, involved in an automobile accident and appeared, sometimes on the day of the accident, usually the next day or within a day or two, either Milton Rubinstein, Charles Astikian, Charles Rubinstein, Jack Gibbons, alias Jack Barrett, "Sandy," last name unknown to the party solicited, "Rice" whose first name was unknown to the party solicited, and other persons whose names were unknown and not ascertained by the party solicited; invariably the party making the contact would state that they had the name of a witness to the accident or had a friend who saw the accident or that they had been sent to make solicitation by a friend of the party involved in the accident. The solicitor would impress upon the party solicited the importance of employing

counsel immediately for the purpose of procuring from the police department a report of the accident, apprising the party that they were representing the firm of Rubinstein and Rubinstein and that this firm had a reputation and ability to secure larger sums of money in accident cases than other lawyers, that if they were in need of money for doctor bills or support or otherwise, Rubinsteins would furnish the money and furnish doctor, that if Rubinsteins were employed they would accept the case on a 33 1/3% or 40% or 50% basis and pay expenses. The representation to pay expenses was made in a large majority of the cases investigated, more than thirty of those mentioned in Bill of Particulars. In most cases the solicitors succeeded in having a contract of employment signed. If unsuccessful, the party solicited was prevailed on to go to the Rubinstein offices at 5525 Woodland Avenue and there meet Joe Rubinstein, Charles Rubinstein, if Milton was not the solicitor, then Milton Rubinstein. Other times they were taken to Joseph Rubinstein's office in the Public Square Building. In all cases where Joseph Rubinstein was not present when the initial contract was signed, clients were advised to visit Joseph Rubinstein's office, sometimes were taken there by Milton, other times by Charles and other times by Dr. Siegel, and there the original contract was destroyed and Joseph Rubinstein had the client sign a new contract in which no mention was made of the payment of expenses.

Dr. Siegel appeared at the home of injured parties without the request of the client, without knowledge or former acquaintance and examined

and treated the client; Dr. Siegel treated the white patients and other doctors employed by Joseph Rubinstein treated colored patients in most cases. Dr. Siegel submitted to Joseph Rubinstein at the end of each month a bill for his services in treating patients. This bill was paid by Joseph Rubinstein at the law office, notwithstanding the fact that no settlement had been made or no recovery had been had in the case. However, if the case was settled, or recovery had, the amount of the doctor bill and other expenses advanced by Joseph Rubinstein was deducted from the client's share of the settlement or recovery.

Joseph Rubinstein had full knowledge that Milton Rubinstein and Charles Astikian had procured contracts for professional employment of Joseph Rubinstein and yet he contents himself by saying that he had such knowledge but that some customer of Milton was the one that made the first contact.

The testimony discloses that the parties involved in the accident did not know any of these parties and had no knowledge of any contact except the contact through the Rubinstein or one of the parties named in the Specifications, who claimed to represent the Rubinsteins and Joseph accepted all these employments without questioning the method used in procuring the contract. It is significant that more than seven hundred cases were involved in a little over two years and that from ninety to ninety-five per cent of the same were personal injury cases. He attempts to explain that the payment of expenses, advancing money, employing physicians was an act of charity and was from the goodness of his heart, rather than any selfish

motives. To aid the unfortunate in the time of distress and want is commended but to aid or promise to aid for the purpose of procuring a signature to a contract for professional employment is reprehensible business. They appeared at the hospitals immediately after the accident, they followed the patient home immediately after temporary treatment; they appeared in the home in the night-time and in the early morning. When they were unsuccessful they brought in neighbors and friends and other clients to use their influence with the unfortunate. They invaded the home when members of the family lay corpse, victims of the accident and notwithstanding the pleadings of the parents or members of the family to be left alone, give them time to think, give them time to bury their dead, they persuaded and succeeded in having contracts signed. The extent of Joseph Rubinstein's operations in taking contingent fee contracts caused him to have his own forms printed (Ex. F). This printed form read in part as follows:

"The said Second Party does hereby assign and set over to said First Party an undivided one half interest in said claim and whatever amount may be received thereon, as security for the payment of his fee for services."

JOSEPH RUBINSTEIN,
By .....
.....
.....

It is the unanimous opinion of this Court that Joseph Rubinstein was the moving spirit in perfecting an organization which in fact solicited pro-

fessional employment in violation of Rule 28 and while he testifies that he did not pay his brother Charles or Milton or Charles Astikian, the fact, if it be a fact, that Joe did not pay these men money, his brother Milton was a member of his household and Joseph was supporting him, for the reason that testimony discloses that the hardware business was not a paying business and no profit was derived therefrom. Charles Astikian testified that he did receive pay from Joseph Rubinstein but Joseph Rubinstein says that he sent client patients to Astikian while in return Astikian brought to him clients, but never did he investigate or inquire from the client the manner in which the client's contract was procured for Joseph Rubinstein.

Under Specification No. 1 the Court find Joseph Rubinstein is guilty.

Specification No. 2 charges that Joseph Rubinstein appropriated to his own use $100.00 belonging to Steve Martin. On this he is found to be not guilty and this Specification is dismissed.

Specification No. 3 charges that Joseph Rubinstein testified falsely before Judge Fred H. Wolf by stating that he did not maintain an organization to solicit business and solicit professional employment for himself or on behalf of Rubinstein and Rubinstein. Under Specification No. 3, the Court finds that he is guilty.

In determining the penalty to be imposed it is incumbent upon the Court to keep in mind that on a former occasion Joseph Rubinstein was reprimanded in this Court for soliciting professional employment. That he has openly and flagrantly violated Rule 28 over a long period of time and

neither in his testimony before Judge Wolf, making the preliminary investigation, nor in his testimony, covering practically one day in the hearing of this cause, is there the slightest evidence of any intention on his part to desist from the course of conduct charged in the first Specification and on which we have found him guilty. In fact he justifies upon a pretense that he is ignorant of the methods used; that he is kind to the unfortunate, and he justifies on the ground that there is a race between the solicitors of legal business and the adjusters of the insurance companies; and that the means justifies the end.

He was represented by eminent counsel and yet in closing argument they concede that the evidence discloses that there had been solicitation. Joseph Rubinstein should not have testified under oath that since 1930 he has not solicited cases nor accepted cases that were solicited.

Charles Rubinstein is a brother of Joseph and Milton Rubinstein. Charles is about thirty-one years of age, he attended the Cleveland Public Schools and attended a night law school four years but did not graduate therefrom. He first took the Bar Examination in July 1931 and failed; took the Bar Examination for the second time in December, 1931 and failed; took the Bar Examination for the third time in July, 1932 and failed; took the Bar Examination for the fourth time in December, 1932 and passed. He was admitted to the practice of law February 10, 1933.

During the years 1925, 1926, 1927 and 1928 he was engaged in the business of selling criminal bonds, "a bail bond salesman," as he termed it.

Since February 10, 1933, he has been employed by his brother Joseph, has engaged in the practice of law, mostly in the Police Court, and has acted as a clerk, without pay, in the hardware store managed by his brother Milton. Charles opens the hardware store in the mornings, waits on customers at times and works in the hardware store every Saturday until ten o'clock at night.

Charles Rubinstein is charged with unprofessional conduct in office involving moral turpitude, and with conduct in office involving moral turpitude. Specification No. 1 claims that for a long period of time he and others acting in concert with him violated Rule 28 of the Supreme Court of Ohio and did solicit professional employment in violation of said Rule and did engage in the practice of what is commonly known and referred to as "ambulance chasing" and that he perfected an organization therefor; that he did obtain professional employment by offering to individuals having claims, by reason of injuries received in accidents, their care, living expenses and payment of hospital and doctor bills incurred as a result of said accidents prior to and in advance of any adjustment of said claims or the trial of causes arising therefrom; that he did employ and use agents, runners and touters to solicit personal injury cases for him or for the firm of Rubinstein and Rubinstein; that he did represent to persons having claims for personal injuries arising out of accidents that he or the firm of Rubinstein and Rubinstein had the names and addresses of persons who witnessed the accident and that he or the firm of Rubinstein and Rubinstein would obtain greater sums of money

for the claim than could any other lawyers; and that he adopted and followed a course of conduct of obtaining a large number of personal injury claims and adjusting the same quickly, irrespective of their value, for the purpose of enriching himself and the firm of Rubinstein and Rubinstein.

In Specification No. 2 it is charged that on or about October 14, 1938, he did state under oath in a judicial proceedings in the Court of Common Pleas of Cuyahoga County, presided over by Judge Fred H. Wolf, that he, Charles Rubinstein, had never solicited professional employment; whereas in truth and in fact he had, on numerous occasions, either on behalf of himself or the firm of Rubinstein and Rubinstein solicited professional employment, all of which statements, it is charged, were material matters in said judicial proceedings.

The Bill of Particulars filed herein specifically names thirteen different persons from whom it is charged he did solicit business and said Bill of Particulars sets forth the date of each such solicitation.

A copy of the Charges and Specifications were served upon respondent Charles Rubinstein, as provided by law. During the trial fifteen disinterested witnesses positively testified that Charles Rubinstein had personally solicited nine of the thirteen cases set forth in Exhibit A of the Bill of Particulars. Many of the witnesses identified Charles Rubinstein in the Court Room. Their identification was sure and certain and their testimony convincing. There is no doubt that Charles Rubinstein did personally solicit nine of the thirteen claims set forth in Exhibit A of the Bill of Par-

ticulars and that such solicitations occurred on or about the dates set forth in said Exhibit A and all occurred prior to October 14, 1938. The evidence is clear and convincing and this Court must and does find that Charles Rubinstein is guilty under Specification No. 1.

Evidence of the solicitation of professional employment by Charles Rubinstein prior to October 14, 1938, having been clearly and convincingly established, it follows that his statement under oath on October 14, 1938, in a judicial proceedings in the Court of Common Pleas of Cuyahoga County, Ohio, presided over by Judge Fred H. Wolf, that he had never solicited professional employment, was false and untrue. Having in mind the nature of said proceedings it is quite evident that said statement was a material matter therein and that Charles Rubinstein is guilty under Specification No. 2.

The evidence clearly shows that respondent, Charles Rubinstein, has consistently violated Rule 28 of the Supreme Court of Ohio during the four years last past and that he made it a general and usual practice; there is not one word of regret from Charles Rubinstein for his past unethical acts or a promise of more ethical conduct in the future. Upon his oath, he denies it all.

Before the adoption of Rule 28, the Supreme Court of Ohio, *In re Thatcher*, 80 O. S. 492, at page 654, said:

> Hence, whenever it is made to appear to the court that an attorney is no longer worthy of the trust and confidence of the public and of the courts, it becomes not only the right but the duty

of the court which made him one of its officers and gave him the privilege of ministering within its bar, to withdraw the privilege. Therefore it is almost universally held that both the admission and the disbarment of attorneys are judicial acts; and that one is admitted to the bar and exercises his functions as an attorney not as a matter of right, but as a privilege conditioned on his own good behavior and the exercise of a just and sound judicial discretion by the court.

The Supreme Court of Ohio adopted Rule 28 to correct an evil. The purpose of the rule was not to criticise soliciting, but to end it, and by disbarment if necessary. This Court of Common Pleas heretofore reprimanded Joseph Rubinstein. It will not again merely reprimand him.

Neither does the court indulge the hope that a reprimand will cause Charles Rubinstein to stop soliciting. He and his brothers have engaged in it as a business for many years. His testimony in the trial also indicates that a mistake was made in admitting him to the bar.

Punishment is not the purpose for proceedings of this character. Their sole object is to protect the public and the courts in the proper administration of justice. Accordingly Joseph Rubinstein and Charles Rubinstein are disbarred.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

In re DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, PETITIONERS

MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF THE RECORD.

Counsel for the petitioners in this case file herewith their petition for a Writ of Certiorari to the Supreme Court of the State of Ohio accompanied by certified copies of the record of the proceedings in the Court of Common Pleas, Cuyahoga County, Ohio, in the Court of Appeals for Cuyahoga County and in the Supreme Court for the State of Ohio together with a certified copy of the Bill of Exceptions including all the testimony taken in the above entitled case.

1. The nature of this case and the questions presented by the petition for a Writ of Certiorari have been set forth in the foregoing petition for a Writ of Certiorari.

2. The sole federal question involved is whether the disbarment of the petitioners without any evidence of misconduct involving moral turpitude constituted a denial of due process of law, denial

of the equal protection of the laws and an impairment of the obligation of the contract. The Bill of Exceptions filed in this Court consists of 807 pages including about 85 exhibits. The testimony is in question and answer form. The petitioners have reduced this Bill of Exceptions to narrative form consisting of 109 pages which includes all the testimony heard in the above entitled proceeding that would be necessary or convenient in the determination of the case at bar. The petitioners have received an estimate that it would cost more than $1,700 to print the entire record including the Bill of Exceptions.

3. The petitioners on the fourteenth day of May, 1940, submitted to the Trial Committee, consisting of Charles Auerbach, James Dolphin and George Brown, a copy of the narrative statement of the testimony in the said Bill of Exceptions and on the twentieth day of May, 1940, delivered to them a typewritten copy of the proposed petition for a Writ of Certiorari herein and requested the said committee to enter into a stipulation subject to the approval of the Court of Common Pleas, Cuyahoga County, that the proposed narrative form of testimony contained all the testimony necessary and convenient for the proper consideration and review of the judgment herein.

On the twenty-first day of May, 1940, the Trial Committee declined to enter into any stipulation for the reduction of the record giving as their reason therefor that the findings of fact and opinions of law had not been included and that the resume of testimony is not in full accord with the actual testimony as the record discloses.

4. The time for filing a Petition for Certiorari in this Court will expire on May 28, 1940. The Trial Committee has offered no suggestions as to any testimony that has been omitted or any testimony that has not been truthfully stated in the narrative submitted and is obviously unwilling to take any steps that will condense the record for the convenience of the court or the lessening of the burdens of the petitioners.

Furthermore, the docket and journal entries in the Court of Common Pleas and in the Court of Appeals are so substantially identical in both cases that the petitioners sought to have the committee stipulate that only the journal entries and docket entries in the case of Joseph Rubinstein be printed and that the same be considered as representative of the similar proceedings that were had in the case of Charles Rubinstein. This also the Committee has refused to approve.

5. The printing of the entire record including the voluminous Bill of Exceptions will impose on the petitioners a grievous financial burden which they are ill-prepared to meet and will involve great expense and hardship to the petitioners. Petitioners, therefore, move that they be relieved from printing the entire Bill of Exceptions and that they be permitted to print in lieu thereof the narrative form of such Bill of Exceptions heretofore submitted to the Trial Committee, a true copy of which has been filed with the Clerk of this Court. The petitioners further move that they be relieved from printing the journal entries and docket entries in the Court of Common Pleas and in the Court of Appeals in the case of Charles Rubinstein

and that the printing of the like proceedings in the case of Joseph Rubinstein may be regarded by this Court as representative of the corresponding proceedings had in the case of Charles Rubinstein.

If the Trial Committee object to consideration of the case on the merits upon a printed record so limited, we suggest that they include in their response to the petition for a Writ of Certiorari a specification of the additional matters which they believe should be included in the printed record, together with an explanation of its materiality to the issues presented by the petition. If this Court determines that any additional matter is material, it could order the printing of such matter.

WHEREFORE, it is prayed: (a) That the Court rule that the accompanying petition for Writ of Certiorari is properly filed upon the record now on file in this Court; (b) that it consider and determine the petition for Certiorari in the case at bar upon the record filed herein omitting in the printing thereof the Bill of Exceptions as certified and substituting therefor the condensed narrative statement of the testimony filed herewith and omitting therefrom the docket and journal entries in the Charles Rubinstein case, the like entries in the case of Joseph Rubinstein to be considered as representative of similar proceedings had in the case of Charles Rubinstein; (c) that it rule that the service of the petition for Certiorari and this motion which petitioners are now making upon the Trial Committee and the service of printed copy of the condensed record after this Court shall have granted this motion and the said

record shall have been printed constitutes sufficient compliance with the rules of this Court.

Respectfully submitted,

BRIEN MCMAHON,
MARTIN J. MONAHEN,
Attorneys for Petitioners.

JUL 11 1940
CHARLES ELMORE CROP
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In the Supreme Court of the United States

OCTOBER TERM, 1940.

Nos. 107 and 108.

In Re: DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW.

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN,
Petitioners.

OPPOSING BRIEF IN BEHALF OF RESPONDENTS.

CHARLES AUERBACH,
Counsel for Respondent.

CHARLES AUERBACH,
JAMES B. DOLPHIN,
GEORGE M. BROWN,
Trial Committee.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO

Wherever "Appendix A" appears herein, reference is made to Appendix A—Petition for Writ of Certiorari.

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In the Supreme Court of the United States

OCTOBER TERM, 1940.

Nos. 107 and 108.

In Re: DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW.

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, *Petitioners.*

OPPOSING BRIEF IN BEHALF OF RESPONDENTS.

PROPOSITIONS OF LAW.

PROPOSITION OF LAW NO. 1.

It was not necessary for the Supreme Court of Ohio to decide the Federal question sought to be raised on the record in this case. No Federal question was involved. Petitioners cannot acquire Federal jurisdiction by allegations.

Mo. v. North, 46 Sup. Ct. 384;
Bell Telephone Co. of Pa. v. Van Dyke, 296 U. S. 533;
Bass v. Milledgville, et al., 290 U. S. 721;
7 *C. J. S.,* 728 Sec. 18;
Ex P. Denson, 178 S. 434;
Re: Thatcher, 190 Fed. 969. Appeal dismissed 246 U. S. 644;
Utley v. St. Petersburg, 292 U. S. 106, 111-112.

PROPOSITION OF LAW NO. 2.

The Federal constitutional provision against self-incrimination is not applicable to disbarment proceedings. It is universally held that proceedings to disbar an attorney are civil, not criminal in nature, and are governed by rules applicable to civil actions, the purpose being to cleanse the Bar, not to punish the offending attorney.

In re: Thatcher, 190 Fed. Ohio 969;
Thatcher, 80 O. S. 492, 670;
Schwartz, 18 O. App. 373;
Wall, 107 U. S. 265;
Rouss, 221 N. Y. 84, 116 N. E. 783;
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Mayberry (Mass.), 3 N. E. (2d) 248;
Fenn, 128 S. W. (2d) Mo. App. 657;
Ex rel. Karlin v. Culkin, 248 N. Y. 465; 60 A. L. R. 851.

PROPOSITION OF LAW NO. 3.

There is no substantial Federal question involved for there has been no deprivation of due process. The proceedings were conducted according to law in Ohio. G. C. 1708. Petitioners were given notice and a reasonable opportunity to answer the charges. They employed counsel; they offered evidence; they were heard in their own defense. All requirements of due process were therefore fulfilled.

Mo. v. North, 46 Sup. Ct. 384;
Hurtado v. Cal., 110 U. S. 516;
Frank v. Mangum, 237 U. S. 309;
Re: Keenan (Mass.), 192 N. E. 65; 96 A. L. R. 679.

PROPOSITION OF LAW NO. 4.

The preliminary investigation into activities of attorneys adopted in this case has been approved in Ohio and elsewhere. Authority for it is founded upon G. C. O. 1707.

In re: The Cleveland Bar Assn. Investigation, 15 O. L. Abstract 106;
Akron Ambulance Chasing Inquiry, 26 O. L. R. 515;
Martin v. Beery, 39 O. L. R. 273;
Rouss, supra;
Ex rel., Karlin v. Culkin, supra.

PROPOSITION OF LAW NO. 5.

The practice of law in Ohio, and in most States in the Union, is controlled and regulated by the Judicial Branch of the Government and constitutes a privilege granted by the State to the individual, burdened with conditions. It is not a contract between the State and the individual, as contended by the petitioners.

The Land Title Abstract & Trust Co. v. Dworkin, 129 O. S. 23;
Judd v. Tr. & Sav. Bank, 133 O. S. 81;
Re: Thatcher, 80 O. S. 492, 64;
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Re: Meck, 51 O. App. 237, 239;
Re: Rouss, supra;
People ex rel., Karlin v. Culkin, supra.

PROPOSITION OF LAW NO. 6.

Practicing law in State courts is not a privilege which arises by virtue of Federal citizenship.

Re: Bradwell, 183 U. S. 130;
Re: Lockwood, 154 U. S. 116;
Philbrook v. Newman, 85 Fed. 139, 142.

PROPOSITION OF LAW NO. 7.

"Ambulance Chasing" involves moral turpitude and is ground for disbarment.

Re: Meck, 51 O. App. 237;
Klenson v. Board of Governance Pa. Bar (Sup. Ct. Pa.), 168 Atl. 474;
Chreste v. Commonwealth, 171 Ky. 77; 186 S. W. 919, 926;
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Rule 28 of Cleveland Bar Association, 29 O. N. P. (N. S. 291);

Re Petition, Rule 28, 15 O. L. A. 106;
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Fish v. Cal., 4 Pac. 2d, 937.

ARGUMENT.

THE PRELIMINARY INVESTIGATION—AN ORDERLY COURT PROCEDURE APPROVED IN OHIO AND FOLLOWED IN NEW YORK AND ELSEWHERE.

The Petitioners pose the question whether calling an attorney-at-law to give an account of his activities as a lawyer before a judicial tribunal in the State which admitted him to practice violates the Federal Constitution. Contending that for a State Court to do so violates due process, the Petitioners attempt to discredit the procedure in the instant case by stigmatizing it as a "star chamber" session, and adding thereto an unfortunate and regrettable misstatement of facts.

Postponing for the moment a discussion of the law relevant to this subject, it is imperative to advise this Court promptly and to indicate factually what transpired in order to allay any suspicion that may have been engendered by the allegations in the Petition for Certiorari.

1. On September 26, 1938, Homer G. Powell, the Chief Justice of the Common Pleas Court of Cuyahoga County, Ohio, upon application by Members of The Cleveland Bar Association ordered an investigation into abuses then prevalent among which was that of "Ambulance Chasing." (Order attached to original charges. Transcript of Docket and Journal Entries in Common Pleas Court.)
2. In October, 1938, the Honorable Judge Wolf of Common Pleas Court, Fulton County, Ohio, undertook the investigation by designation of the Chief Justice of the Supreme Court of Ohio.

3. On October 14, 1938, after numerous witnesses were inquired of, Joseph Rubinstein was called. Relator's Exhibit D, which the Petitioners do not include in their proposed narrative Bill of Exceptions, contains the statements made during said preliminary hearing by Joseph and Charles Rubinstein. It reads as follows:

"Friday, October 13, 1938, 9:15 o'clock a. m.

"Whereupon, Joseph Rubinstein was duly sworn by the Court, and was examined, and testified as follows:

"Examination by Mr. Wilson:

Q. Your name is Joseph Rubinstein?
A. Yes.
Q. Where do you live, Mr. Rubinstein?
A. 3160 Oak Road, Cleveland Heights, Ohio.
Q. Are you an attorney-at-law?
A. I am.
Q. Do you have offices?
A. Yes. At 407-408 Public Square Bldg., Cleveland.
Q. Do you maintain another office, too?
A. Yes. At 5525 Woodland, in the hardware store in back," etc.

From page 1761 to page 1852, as they are marked, in "Relator's Exhibit D," not one word of objection appears to the questions asked from either Joseph Rubinstein or Charles Rubinstein. Not one word was spoken by Joseph Rubinstein or Charles Rubinstein, indicating that either wanted counsel. Not a syllable appears from which it might even be inferred that they protested against being questioned. In fact, at page 1847 of said "Exhibit D," the following appears:

"Mr. Bolton: Your Honor, I think Mr. Rubinstein ought to be instructed not to destroy his records.
The Witness: (J. R.) Oh, I have got them all.
Mr. Bolton: We want to use them later on.
The Court: Oh, yes. I assume he won't do that.
The Witness: I will destroy them today. Why, I have got all my records for years back. You can come

up at any time that you want and check with them. You don't even have to call me.

Mr. Wilson: The cancelled checks, too?

The Witness: You can come up at any time.

The Court: You will preserve them?

The Witness: Sure. Who do you want first this afternoon, Terrell or my brother Charles?

The Court: Which do you want first this afternoon?

Mr. Wilson: Terrell.

Whereupon, the witness was excused.

The Witness: I would like to have my subpoena fee. How about my dollar?

Mr. Wilson: Do you want the dollar?

The Witness: Yes.

Mr. Wilson: All right. I will pay it to you."

Pursuant thereto, Charles Rubinstein and Seymour Terrell appeared, were interrogated and not one word of protest was offered by either; no objection was interposed, and no request for counsel was made. (Testimony of Charles Rubinstein—Relator's Exhibit D—pages 1929-1968.) On the 24th day of October 1938 Judge Wolf ordered this Committee to file charges against Charles and Joseph Rubinstein. (Journal entry attached to original charges.)

Thus it may be seen that far from the allegation of a "star chamber" session which the Petitioners would have the Court believe took place over their objections, the proceedings were conducted by a Judge of the Common Pleas Court, in an atmosphere of fairness sufficient to impel Joseph Rubinstein to ask of the Court when his brother and his employee were wanted and they would appear at the time agreed upon.

Disposing, therefore, of the factual matter which Petitioners should have but did not include in their narrative bill, we respectfully call the Court's attention to but a few of numerous cases which hold that the procedure adopted

by our Courts in Ohio is proper and does not violate the lawyer's constitutional rights.[1]

In *People ex rel., Karlin v. Culkin,* Justice Cardozo held:

> "The Court has power to direct a general inquiry into the conduct of its own officers, the members of the Bar, and, in the course of that inquiry to compel one of those officers to testify as to his acts in his professional relations, subject to his claim of privilege if the answer will expose him to punishment for crime and provided the inquiry be a secret one in its preliminary stages."

The secrecy which Justice Cardozo imposed upon such an investigation to prevent harm to innocent lawyers who might become the subject of inquiry is made use of by the Petitioners as a denial of their constitutional rights, by appending thereto the opprobrium "star chamber." Universally, this procedure is approved, Ohio included.[2]

To raise a Federal question, the Petitioners complain that their statements thus given upon the preliminary investigation could not be used against them on trial. Doing so, it is claimed, denied them due process. The contention is based upon the assumption that a disbarment proceeding is a criminal proceeding and, therefore, inquiring of the attorney involves the constitutional inhibition against self-incrimination. We have heretofore cited numerous cases under Proposition No. 2, holding that disbarment is not a criminal but a civil proceeding. It is so considered in Ohio and elsewhere in the United States. There are no common

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[1] 1. *People ex rel., Karlin v. Culkin, supra.*
2. *Ex Parte, Wall,* 107 U. S. 265.
3. *Garfield v. U. S.,* 32 Ap. D. C. 109.
4. Annotation, 60 *A. L. R.* 860, 863.
5. *Re: Kennan, supra.*

[2] *Akron Inquiry,* 26 O. L. R. 515.
Re Newcomb, 15 O. L. A. 106.
Re Rouss, 221 N. Y. 84.

law crimes in Ohio[3] and there is no statutory provision in our State which makes it unlawful for either an attorney to solicit professional employment or for others to solicit for him. The Petitioners, therefore, could have admitted frankly their activities, especially those of soliciting professional employment, which their counsel admitted in argument after two weeks of trial, without subjecting themselves to any criminal charge. Thus, the filing of specification No. 3 against them would have been precluded. The violation of Rule 28 of the Supreme Court of Ohio subjects the offender to reprimand, suspension, or disbarment but not to punishment for crime. No criminal charge of any kind has been instituted against the Petitioners. But the Petitioners continued to deny solicitation of business, even during trial, and it was only at the close of the case, in the face of overwhelming testimony that counsel for the Petitioners during his closing argument, admitted that Joseph Rubinstein solicited professional employment. (Appendix A—Findings of the Trial Judges.)

In New York, although it is unlawful for an attorney to employ one for the purpose of soliciting business,[4] he may nevertheless be called to testify concerning his conduct as a lawyer and such testimony may be introduced upon the trial of charges of unprofessional conduct made against him as a result of such investigation.[5] He is allowed to obtain the benefits of constitutional immunity against self-incrimination, and his refusal to waive such immunity is in and of itself no ground for disbarment or even censure, but his statements, thus made, may be used for purposes of disbarment in the proceeding instituted against him.

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[3] *VanValkenberg v. Ohio,* 11 O. 405, 406.

[4] 39 McKinney's Consolidated Laws of New York, Penal, Article 24, Section 270 D.

[5] *Re: Rouss, supra.*
Re: Solovei, 293 N. Y. S. 640; affirmed in 276 N. Y. 647.

THE TRIAL.

A FULL AND FAIR TRIAL WAS GIVEN THE PETITIONERS IN COMPLETE ACCORD WITH OHIO LAWS.

Trial procedure in disbarment proceedings in Ohio is governed by G. C. O. Section 1708:

> "*Proceedings against attorney.*—Before an attorney is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, he shall be allowed a reasonable time to collect and present testimony in defense, and he shall be heard by himself or counsel."

Although Courts in Ohio have inherent power exclusively to regulate, define and control the practice of law,[6] nevertheless, the procedure involved in a disbarment proceeding is governed by G. C. O. Section 1708. Adhering strictly to the provisions of that Section and G. C. O. 1707, which imposes a duty upon judges of State courts "to cause proceedings to be instituted against an attorney-at-law when it comes to the knowledge of any judge or when brought to his knowledge by the Bar Association of the County in which such attorney practices, that he may be guilty of any of the causes of suspension, removal or reprimand," Judge Wolf ordered Charles Auerbach, James B. Dolphin and George M. Brown to prepare and file written charges and specifications against Joseph and Charles Rubinstein, and one, Seymour Terrell. (Appendix—Journal Entry of Judge Wolf.)

On the 21st day of November, 1938, the Committee, pursuant to said order, prepared, signed, and filed written charges and specifications against Joseph and Charles

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[6] *Dworkin v. The Land Title & Trust Company, supra.*
Judd v. Tr. & Sav. Bank, supra.
Schwartz, supra.

Rubinstein and Seymour Terrell. (Transcript of Record and Journal Entries.)

On the 23rd day of November, 1938, copies of said charges and specifications were served by the Sheriff of Cuyahoga County, upon the three men named, allowing them until the 24th day of December, 1938, to make answer and to present testimony in their defense on January 10, 1939. (*Ibid.*)

The time allowed in civil causes for answer by defendants is "on or before the third Saturday after the return day of the summons or service by publication." (G. C. O. 11346.) In disbarment proceeding, no definite date for answer is provided. (G. C. O. 1708.) Nevertheless, the Chief Justice of the Common Pleas Court allowed Joseph and Charles Rubinstein the full time allowed by the statute in civil cases, to make answer.

On the 23rd day of December, 1938, Joseph and Charles Rubinstein filed motions to make definite and certain the charges against them. These were orally argued in open Court and overruled. Later, they filed motions seeking a postponement of the trial date. The motions were granted and the trial date set for January 30, 1939.

On the 30th day of January, 1939, the Honorable Guy B. Findley, Judge of the Common Pleas Court of Lorain County, Charles Houston, Judge of the Common Pleas Court of Richland County, and Clarence U. Ahl, Judge of the Common Pleas Court of Crawford County, by designation of the Chief Justice of the Supreme Court of Ohio, proceeded to try the lawyers named. (*Ibid.*)

The Petitioners, Joseph and Charles Rubinstein, were represented by two able lawyers in Cleveland, Ohio, who cross examined witnesses offered by the Committee, examined witnesses for the respondents, argued motions orally, took objection and exception to introduction of testimony, put Joseph and Charles Rubinstein on the witness stand in their own behalf, offered testimony of character

witnesses, and argued the case of each. (Findings of Trial Judges, Appendix A, Petition for Writ of Certiorari.)

On the 10th day of February, 1939, after 11 days of trial, the case was submitted to the three Judges, who, after deliberating through that day and the following day, rendered their decision on the 11th day of February, 1939, finding Joseph and Charles Rubinstein guilty on two charges, Joseph Rubinstein not guilty on one charge, and ordered the disbarment of both. Thereafter, appeal was made to the Court of Appeals, which affirmed the judgment of the Common Pleas Court, which, on appeal to the Supreme Court of Ohio, was again affirmed.

We respectfully submit that the constitutional requirements for due process were thus fully met by the foregoing procedure. As was stated by Mr. Justice Stone in *Mo. v. North,* 46 Sup. Ct. 384:

> "The Due Process Clause does not guarantee to a citizen of a State any particular form or method of State procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defense."

The Supreme Court of the United States in the same case further declared:

> "A statute which places all physicians in a single class and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment."

MORAL TURPITUDE.

THE ACTS OF MISCONDUCT OF THE PETITIONERS, IRRESPECTIVE OF FALSE SWEARING, CONSTITUTE MORAL TURPITUDE.

It is claimed by the Petitioners that charging them with offering false testimony upon the preliminary investigation was gratuitous and oppressive and but for such charge the Petitioners could not have been found guilty of unprofessional conduct involving moral turpitude, and, therefore, could not have been disbarred.

It is imperative, therefore, that this Court be advised briefly of what acts of misconduct, exclusive of false swearing, the Common Pleas Court found the Petitioners guilty.

We submit that the following acts of misconduct of which the Petitioners were found guilty in and of themselves constitute unprofessional conduct involving moral turpitude.

1. Joseph Rubinstein solicited Marksz, Sr. for his claim against a defendant for the death of his boy, during a "wake" while the body of his son was lying in state in his home before burial. (Record Pages 352-355.) (Finding of Court, Appendix A, Petition for Certiorari.)
2. In the same case, when the father refused to consider Joseph Rubinstein as counsel, he importuned the sister of the dead boy to intercede in his behalf upon the promise of a job for her. (Record Pages 354-355.)
3. Charles Rubinstein solicited John Vance before he arrived at his home from the hospital and signed him to a contract, against the side of a building, before he could enter his household, having followed him from the hospital where he importuned his wife to keep him in the hospital a little longer than the short time required for treatment of minor injuries. (Record Pages 233-236.)
4. Milton Rubinstein, a brother of Charles and Joseph, who, Joseph admitted, brought the firm

numerous cases, gave one, Matty, whiskey to raise his blood pressure to make it appear that he had received an aggravated injury. (Record Pages 207-229.)

5. Joseph Rubinstein signed Margaret Stensel to a contract while she was in a hospital in a semi-conscious condition a few days after a serious railroad accident when she did not know what she was signing, and refused to return the contract to her when she became fully aware of what she had done and demanded the same, until forced by The Cleveland Bar Association to do so. (Record Pages 240-244.)
6. Likewise, Frank White was signed to a contract while semi-conscious. (Record Pages 14, 15 and 16.)
7. Rubinsteins' solicitors approached John Henry Spates within three minutes after an accident, urging him to engage a lawyer and signed him to an agreement for such employment, in the hardware store of Milton Rubinstein, the outpost of the activities of this firm, within twenty minutes after the accident occurred. (Record Pages 122, 126 and 127.)
8. In the same case, although Spates was uninjured, and said so, he was advised by one of the Rubinsteins, "The one who owned the hardware store," "If you want any money, you cannot say there is nothing wrong with you. You have to say your back hurts," and was advised to see a Dr. Stevens who examined for the Rubinsteins. (Record Pages 122, 126 and 127.)
9. Rubinstein & Rubinstein obtained employment upon the false representation by solicitors that the lawyers had witnesses; they entered the homes of persons totally strange to them, upon representation that they were social workers or newspaper reporters; that friends had sent them. (John Caduff, Record Page 339; Jane Cordell Hayes, Record Pages 277-278; Helen Trembluk, Record Pages 182-187; Mike Kotys, Record Page 312; Frank

Balas, Record Page 144; Findings of Court, Appendix A, Petition for Writ.)

10. The Petitioners obtained contracts from injured persons upon the representation that all expenses would be paid and then had them execute other agreements in which no mention was made of paying such expenses. (Record Pages 84, 85, 158, 90, 91, 92, 175, 225, 227, 289, 572, 573, 606.)

11. Joseph Rubinstein advised a client to indicate to a defendant's examining physician, that his back hurt, because such claim could not be ascertained or disproved by physicians. (Record Pages 207-229.) (Testimony of John Vargo, Record Pages 254-262.)

12. They engaged the services of runners to solicit cases for them and paid for such services. (Record Pages 1-34.) (Findings of Trial Judges, Appendix A, Petition for Certiorari.)

13. They employed doctors to examine clients and paid stipulated sums regularly for such services. (Findings of Judges, Appendix A.)

14. After Joseph Rubinstein was reprimanded by the Common Pleas Court for soliciting professional employment in 1930, he continued on a vaster scale to build an organization and engage in such practice, irrespective of the reprimand. (Findings of Judges, Appendix A. Record Page 555.)

15. In a period of approximately two years, one young attorney in the office of Rubinstein & Rubinstein had for disposition seven hundred cases, ninety-five per cent of which were personal injury matters. This was the extent of the workings of this organization. (Record Page 604 and Page 1856 Relator's Exhibit S.)

16. A declaration by an attorney such as the following made by Charles Rubinstein indicates a conscious disregard of the high moral standard required of attorneys necessary in the proper administration of justice, and involves moral turpitude. Charles Rubinstein, at Record Page 606,

on cross examination, when questioned regarding the method employed by him to solicit business, stated:

> "Usually I learned that from around the Police Station. If you want to stay on the right side, take one of the relatives along with you. They have got to admit you and the people will recognize the party. No one spits in your face and you are on the right side of the law."

17. The operations of this firm included an outpost in a hardware store of Milton Rubinstein, brother of Charles and Joseph Rubinstein (R. 16) to which came information of accidents and from which Milton and Charles Rubinstein and Charles Astikian, as well as others, "Sandy" and "Rice" ventured forth. Areas were assigned to various persons. Astikian had the hotel area (R. 19-20.) Use was made of printed contingent employment contracts with the name of Joseph Rubinstein printed thereon to be signed by whoever obtained the case. (Findings of Judges, Appendix A, Petition for Writ of Certiorari.)

With such facts in their possession, the Committee did not have to resort to imaginary soliloquies or to alleged chicanery, as charged in the Petitioners' application for Writ of Certiorari, at Page 14, to establish moral turpitude. But with such facts in the Committee's possession, it was clearly apparent that when both Charles and Joseph Rubinstein stated under oath that they did not solicit business and that they employed no one to solicit for them, they were not telling the Court the facts and it became their duty to charge them with such misconduct. In Ohio, the rule by which a lawyer's conduct is measured has been very clearly stated to be as follows:

> "Whenever it is made to appear to the Court that the attorney is no longer worthy of the trust and confidence of the public and of the Courts, it becomes not merely the right but the duty of the Court which made him one of its officers and gave him the privilege of

ministering within its Bar, to withdraw the privilege."[7]

Our Courts have further held that conduct far less reprehensible than was proved against the Petitioners in this case may subject the attorney to suspension or disbarment.[8]

The Supreme Court of Ohio, by refusing review in the case at Bar, has held that the Petitioners' conduct merited disbarment for violating the standards which it laid down for the conduct of its officers.

Since in Ohio such conduct involves moral turpitude, this Court, it has been held, will disregard the alleged claim that the conduct of the Petitioners, exclusive of false swearing, did not involve moral turpitude.[9]

This Court will not review the judgment of the Supreme Court of Ohio concerning a rule of conduct promulgated by that Court for the conduct of its own officers.

CONCLUSION.

Thus, under the law and rules governing this Honorable Court, we conclude that the Petition for Writ of Certiorari in this cause should be denied; that there is no Federal question involved in this cause; that none was necessary to be decided by the Supreme Court of Ohio, and therefore, the Committee's motion to dismiss the petition as of right was granted; that Petitioners were not denied due process, having been given due notice of the charges, according to law in Ohio, and an opportunity to answer and be heard in their own defense; that the Petitioners were guilty of misconduct involving moral turpitude; that the findings of the Trial Court were affirmed by the Court of Appeals and

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[7] *Re: Thatcher,* 80 O. S. 492, 654.

[8] *Re: Meck,* 51 O. App. 237.

[9] *Re: Mo. v. North,* 271 U. S. 40; 46 Supreme Court 384.

by our State Supreme Court; that the Petitioners were accorded every protection guaranteed them by the law of the land.

Respectfully submitted,

CHARLES AUERBACH,
Counsel for Respondents.

CHARLES AUERBACH,
JAMES B. DOLPHIN,
GEORGE M. BROWN,
Trial Committee.

In regard to the motion to dispense with printing portions of the record, we respectfully submit that on the 20th day of May, 1940, when the proposed narrative bill was offered to the Committee, it contained neither the finding of facts nor the contents of Relator's Exhibits "D" and "R." The Committee was not afforded sufficient time to check the narrative bill against the voluminous record in this case but from a study thereof in the short time allowed, it was apparent that the narrative bill reduced the testimony in such measure that a complete account of the entire proceeding from its inception to its conclusion could not be gained therefrom. For these reasons the Committee refused to stipulate.

The Committee is not aware that it was requested or that it refused to stipulate that the docket and journal entries in the Court of Common Pleas and the Court of Appeals in the case of Joseph Rubinstein be printed and that the same be considered as representative of similar proceedings had in the case of Charles Rubinstein. If so, we concede that the transcript of the journal entries in the one case is substantially the same as in the other and may be so used. We do not concede, however, that the proposed narrative bill now contains the testimony necessary to a judi-

cial determination of the questions raised by the petitioners in their petition for a writ of certiorari.

CHARLES AUERBACH,
JAMES B. DOLPHIN,
GEORGE M. BROWN,
Trial Committee.

I hereby certify that a copy of the foregoing Brief and Argument has been served upon Martin J. Monahen, one of counsel for the Petitioners, in Cleveland, Ohio, this 9th day of July, 1940.

CHARLES AUERBACH.